IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 252/1997 and RFA No.321/1997.

Date of Decision: 27th July, 2006.

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1. RFA No.252/1997.

M/s Shivalik Agro Poly-Products Ltd. and others. Appellants.

Versus

Yash Gopal. Respondent.

2. RFA No.321/1997.

Yash Gopal. Appellant.

Versus

The Executive Director Shivathene Linopack Ltd. and others. Respondents.

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The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting[1]?

RFA No. 252/1997.

For the appellants: Mr. K.D. Sood, Advocate.

For the respondent: Mr. Rajiv Sharma, Senior Advocate, with Mr. Surender Sharma, Advocate.

RFA No. 321/1997.

For the appellant: Mr. Rajiv Sharma, Senior Advocate, with Mr. Surender Sharma, Advocate.

For the respondents: Mr. K.D. Sood, Advocate, for respondent No.2.

V.K.Gupta, C.J. (Oral).

By this common judgment, both the appeals are being disposed of together.

The plaintiff Yash Gopal filed a suit for declaration with some consequential reliefs. The

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

suit was based on the fact of termination of the services of the plaintiff. The plaintiff's grievance was that the letter dated 30th March, 1991 terminating his service was bad and illegal. He accordingly claimed a decree of declaration as well as consequential reliefs. The defendants put up a plea in defence that they had not terminated the service of the plaintiff but the plaintiff had resigned. In support of this plea, they produced a so called resignation letter dated 30th March, 1991. The following Issues were framed by the learned trial Court for adjudication in this case:-

"1. Whether the order of termination passed by defendant is wrong and illegal as alleged? OPP.
2. Whether the plaintiff resigned himself from the defendants company. If so, its effect? OPD.
3. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD.
4. Whether the plaintiff has a cause of action? OPP.
5. Whether the plaintiff has no locus standi to sue? OPD.
6. Whether the suit is not maintainable in the present form? OPD.
7. Whether the plaintiff is estopped from filing present suit by his act and conduct? OPD.
8. Relief"

Finding on Issues No.1 and 2 as returned by the trial Court is very relevant and material for

the purposes of disposal of these two appeals. In so far as Issue No.3 is concerned, the finding on this Issue went against the plaintiff because the learned trial Court held that even though the suit for the relief of declaration was valued properly for the purposes of Court fee and jurisdiction but since the plaintiff had claimed wages as well as salary along with other benefits and in the alternative damages for each and every actionable wrong committed by the defendants, the suit for the consequential reliefs was not valued properly. Accordingly, the learned trial Court passed the only decree of declaration in favour of the plaintiff to the effect that the termination of his service by the defendants was contrary to the terms of agreement dated 9th August, 1990.

I have heard the learned counsel for the parties in both the appeals and find that the learned trial Court did not commit any error in passing the decree in favour of the plaintiff to the only, limited extent of declaration as noticed above. The learned trial Court has rightly decided Issue No.3 against the plaintiff because undoubtedly the suit was not valued properly for the purposes of Court fee and jurisdiction in so far as the consequential reliefs were concerned. In so far as Issues No.1 and 2 are concerned, I fully agree with the findings of the learned trial Court that there was a patent conflict and discrepancy in the stand taken by the defendants in the suit about the so

called resignation offered by the plaintiff. If the plaintiff indeed had submitted his resignation, the defendants ought to have produced the resignation letter in original. Their producing a typed unsigned copy of the resignation letter shows that they story put forth by the defendants was not correct. This apart, there was a clear discrepancy and incoherence in the stand of the defendants because on the one hand on 30th March, 1991 the defendants themselves issued a Certificate in favour of the plaintiff commending his service and paying glowing tributes to him, on the same day they accused him of not performing well in the impugned termination order. Not only this, the probation period even though was extended by three months, yet within this period of three months they terminated the service of the plaintiff.

No interference is called for. Both the appeals are dismissed, but without any order as to costs.

Interim order passed on 22nd July, 1999 shall stand vacated.

27th July, 2006. (V.K. Gupta), C.J.
(tr)